

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:5

PLR-106135-09

Date: June 1, 2009

Legend

Authority =

State =

Board =

a =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Dear :

This is in response to your request for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file Form 8328 (Carryforward Election of Unused Private Activity Bond Volume Cap) for Authority to make a carryforward election under § 146(f) of the Internal Revenue Code with respect to \$a of unused private activity bond volume cap from Year 1.

You make the following factual representations. Authority is a non-profit corporation organized under the laws of State. Authority is authorized to issue qualified student loan bonds described in § 144(b). Board administers the system established by State

pursuant to § 146(e) to allocate State's private activity bond volume cap. In late Year 1, Authority engaged Bond Counsel who assisted in making an application to the State Board for a carryforward under state law of unused volume cap for Year 1. On Date 1, Board awarded Authority a carryforward in the amount of \$a. Bond Counsel did not timely advise Authority of the need to file with the Internal Revenue Service the Form 8328.

On or about Date 2, Bond Counsel discovered that the required Form 8323 pertaining to the Authority's carryforward from Year 1 of \$a volume cap had not yet been timely filed. Shortly thereafter, on Date 3, Authority submitted a ruling request for an extension of time to file a Form 8328 electing to carryforward the \$a of Year 1 volume cap. As of Date 3, the IRS had not discovered Authority's failure to timely file the Form 8328.

Law and Analysis

Section 146(f)(1) provides that if an issuing authority's volume cap for any calendar year after 1985 exceeds the aggregate amount of tax-exempt private activity bonds issued during the calendar year (by the authority), the authority may elect to treat all (or any portion) of the excess as a carryforward for one or more carryforward purposes.

The election is made by filing Form 8328 with the Internal Revenue Service Center, Ogden, UT 84201. Under Notice 89-12, 1989-1 C.B. 633, Form 8328 must be filed by the earlier of (1) February 15 of the calendar year following the year in which the excess amount arises, or (2) the date of issue of bonds issued pursuant to the carryforward election. While Revenue Procedure 2005-30, 2005-1 C.B. 1148, provides for an automatic extension of six months from the due date of the carryforward election to make the carryforward election, it does not apply in this case.

The election must identify the purpose for which the carryforward is elected, and specify the amount to be carried forward for the purpose. Section 146(f)(2). Carryforward elections (and any identifications or specifications stated therein) are irrevocable. Section 146(f)(4).

Section 301.9100-1 of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements for automatic extensions in § 301.9100-2,

must be made under the rules of § 301.9100-3. Requests for relief will be granted if the taxpayer provides evidence establishing to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Section 301.9100-(3)(b)(1) provides, in part, that the taxpayer is generally deemed to have acted reasonably and in good faith if the taxpayer requests relief under that section before the failure to make the regulatory election is discovered by the IRS.

Section 301.9100-(3)(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability than the taxpayer would have had if the election had been timely (taking into account the time value of money).

CONCLUSION

Under the facts and circumstances of this case, we conclude that Authority acted reasonably and in good faith, and that granting an extension of time under § 301.9100-1 to file a Form 8323 to carry forward \$a of unused Year 1 volume cap will not prejudice the interests of the government. Therefore, Authority is granted an extension of time to 45 days from the date of this letter ruling to file the Form 8328 to carry forward \$a of unused Year 1 volume cap. A copy of this letter should be attached to the Form 8328. A copy is enclosed for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Timothy L. Jones
Senior Counsel
(Financial Institutions & Products)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes